

REMARKS

Examiner has provisionally rejected Claims 23 and 26-30 on the ground of nonstatutory double patenting over Claims 28, 29, and 31-34 of copending Application Serial No. 10/590,638 ("the '638 Application"). In addition, Examiner has rejected Claims 23, 26, 29, and 30 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 1,426,239 to Witzberger ("Witzberger"). The Examiner has also rejected Claims 25, 27, and 28 under 35 U.S.C. § 103(a) as being unpatentable over Witzberger.

Claims 23 and 26 stand currently amended to clarify that the first inclined surface is inclined with respect to the plane of the thin wall at an acute angle of more than 0° and less than 90°. This amendment is clearly supported by the drawings and written description of the current Application. Claims 22, 24, and 31-42 stand previously withdrawn. Claims 1-21 stand previously canceled. Claims 22-42 are currently pending. The following remarks are considered by applicant to overcome each of the Examiner's outstanding rejections to current Claims 23 and 25-30. An early Notice of Allowance is therefore requested.

I. SUMMARY OF RELEVANT LAW

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The determination of obviousness rests on whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. In determining obviousness, four factors should be weighed: (1) the scope and content of the prior art, (2) the differences between the art and the claims at issue, (3) the level of ordinary skill in the art, and (4) whatever objective evidence may be present. Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor. The Examiner carries the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness and must show that the references relied on teach or suggest all of the limitations of the claims.

II. PROVISIONAL NONSTATUTORY DOUBLE PATENTING REJECTION OF
CLAIMS 23 AND 26-30

On page 2 of the current Office Action, the Examiner provisionally rejects Claims 23 and 26-30 on the ground of nonstatutory double patenting over Claims 28, 29, and 31-34 of the '638 Application. These rejections are respectfully traversed and believed overcome in view of the following discussion.

As an initial matter, Applicant notes that the current double patenting rejection is **deficient** for failing to address relevant arguments presented by Applicant in the prior Amendment/Response filed on October 6, 2010.

In particular, Applicant has already pointed out that the '638 Application is a national phase application of a PCT application (i.e. PCT/EP05/02083 filed on February 28, 2005). The current Application is also a national phase application of a PCT application (i.e., PCT/EP05/00728 filed on January 26, 2005). Thus, the effective filing date of the current Application (i.e., January 26, 2005) **predates** the effective filing date of the '638 Application (i.e., February 28, 2005). As such, the '638 Application **cannot** be used in a double patenting rejection of the current Application.

Examiner has completely failed to address this argument, or explain how the double patenting rejection over a reference which has a **later filing date** than the current Application can possibly be maintained. As such, the current double patenting rejection is **deficient** and cannot be maintained in its current form. Thus, Examiner must either (1) withdraw the current double patenting rejection, or (2) address Applicant's above arguments in a **new *non-final*** Office Action. Applicant respectfully notes that, due to the current deficiency, any next Office Action which seeks to maintain the current double patenting rejection **must** be marked as **non-final**, and address of Applicant's arguments presented in the current Amendment/Response.

Since, the '638 Application **cannot** be used in a double patenting rejection of the current Application, and the current double patenting rejection has been made as a **single** rejection over two references, Applicant respectfully asserts that Examiner has failed to establish a *prima facie* case of nonstatutory double patenting of Claims 23 and 26-30. Therefore, Applicant respectfully requests Examiner withdraw the rejection of Claims 23

and 26-30 on the ground of nonstatutory double patenting over Claims 28, 29, and 31-34 of copending Application Serial No. 10/590,638.

III. REJECTION OF CLAIMS 23, 26, 29, AND 30 UNDER 35 U.S.C. § 102(B)
BASED ON WITZBERGER

On page 2 of the current Office Action, the Examiner rejects Claims 23, 26, 29, and 30 under 35 U.S.C. § 102(b) as being anticipated by Witzberger. These rejections are respectfully traversed and believed overcome in view of the following discussion.

Amended, independent Claims 23 and 26 both state, in part:

“wherein the first inclined surface is inclined with respect to the plane of the thin wall at an acute angle of more than 0° and less than 90°.” (emphasis added).

Witzberger clearly shows that the surfaces of the members 2 of Witzberger which Examiner asserts disclose the “first inclined surface” of Claims 23 and 26 are parallel to the plane of the plates a, b. As such, Witzberger clearly fails to disclose holding elements with a “first inclined surface” that is inclined with respect to the plane of the thin wall at an acute angle of more than 0° and less than 90°, as required by Claims 23 and 26.

Accordingly, Applicant respectfully asserts that Examiner has failed to establish a *prima facie* case of anticipation of independent Claims 23 and 26, and corresponding Claims 29 and 30 because they are each ultimately dependent from one of independent Claims 23 and 26. Therefore, Applicant respectfully requests that Examiner remove the rejection of Claims 23, 26, 29, and 30 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 1,426,239 to Witzberger.

IV. REJECTION OF CLAIMS 25, 27, AND 28 UNDER 35 U.S.C. § 103(A) BASED ON WITZBERGER

On page 4 of the current Office Action, the Examiner rejects Claims 25 and 27-30 under 35 U.S.C. § 103(a) as being unpatentable over Witzberger. These rejections are respectfully traversed and believed overcome in view of the following discussion.

Examiner admits that Witzberger fails, to disclose the structural limitations of Claims 25, 27, and 28. Rather, Examiner simply makes blind, unsupported assertions that

various structural elements were known by one of ordinary skill in the art at the time of the current invention, and that it would be obvious to incorporate these supposedly "known" structural elements into the teachings of Witzberger. Thus, these assertions essentially reject Claims 25, 27, and 28 as being obvious over Witzberger in view of **official notice**.

In this regard, the rejections of Claims 25, 27, and 28 depend on mere conclusory statements and an impermissible reliance on Official Notice. More specifically, the Examiner's use of Office Notice bears no support whatsoever, and therefore is deficient and entitled to no weight whatsoever. Thus, in accordance with MPEP 2144.03(C) and so that the record of prosecution be complete, Applicant respectfully asserts (1) that documentary evidence under 37 C.F.R. 104(c)(2) must be provided which supports the Examiner's Official Notice assertions, or (2) an affidavit of the Examiner must be provided under 37 C.F.R. 104(d)(2) setting forth specific factual statements which support the Examiner's Official Notice assertions and explanations to support the facts asserted. In the absence of the Examiner satisfying either (1) or (2) above, the Examiner **must withdraw** the rejection of Claims 25, 27, and 28 made in view of **Official Notice**.

Accordingly, Applicant respectfully asserts that Examiner has failed to establish a *prima facie* case of obviousness of Claim 25, 27, and 28. Therefore, Applicant respectfully requests that Examiner withdraw the rejection of Claim 25, 27, and 28 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 1,426,239 to Witzberger.

Based upon the above remarks, Applicant respectfully requests reconsideration of this application and its early allowance. Should the Examiner feel that a telephone conference with Applicant's attorney would expedite the prosecution of this application, the Examiner is urged to contact him at the number indicated below.

Respectfully submitted,



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